

1 cases in which a stricter pleading standard is required. Because fraud allegations involve a
 2 serious attack on defendants' character, fairness requires that allegations of fraud be plead "with
 3 particularity" so that the court can weed out nonmeritorious actions before defendant is required
 4 to answer. This is said to be the "last remaining habitat" of Common Law pleading standards.
 5 *Committee on Children's Television Inc. v. General Foods Corp.* (1983) 35C3d 197, 216.

6 Therefore, every element of the cause of action for fraud must be alleged in full, factually
 7 and specifically. The policy of liberal construction of pleading will not be invoked to sustain a
 8 pleading defective in any material respect. *Wilhelm v. Pray, Price, Willisams & Russell* (1986)
 9 186 CA3d 1324, 1332. The particularity requirement necessitates pleading facts that "show how,
 10 when, where, to whom and by what means the representations were tendered." *Stansfield v.*
 11 *Starkey* (1990) 229 CA3d 59, 73.

12 While Plaintiff argues that discovery is necessary to ultimately reveal all of the fraudulent
 13 conduct and those specific persons and/or entities involved in such conduct, such an argument in
 14 ignores the well-settled specificity requirement. The substantive elements of fraud are (a)
 15 misrepresentation; (b) knowledge of the falsity; c) intent to defraud; (d) justifiable reliance; and
 16 (e) resulting damage. It is incongruous then to base a cause of action for fraud on information
 17 and belief. Plaintiff, alleging that he justifiably relied upon some statement of the Defendant(s),
 18 is in a unique position to know precisely upon what statement he relied, who made the statement,
 19 how and when the actionable statement was made. Plaintiffs' conclusory terms do not come
 20 close to meeting the specificity requirement.

21 Further, contrary to Plaintiff's assertions, *Committee on Children's Television Inc.* does
 22 not support their argument. In *Committee on Children's Television Inc.*, where the alleged
 23 misrepresentations were numerous and made to many different people, by and through public
 24 advertisements, the court upheld the order of the trial court sustaining demurrers to the third,
 25 fourth, fifth and sixth causes of action for fraud. While the court noted that for plaintiffs to
 26 provide the substance of each advertisement verbatim would be impractical, they stated that the
 27 trial court could reasonably require plaintiffs to set out or attach a representative selection of the
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1 advertisements. *Committee on Children's Television Inc.*, at 218. A representative section in
 2 this regard, is a specific example of the oft repeated representations, and not as Plaintiffs would
 3 have this Court believe, merely conclusory allegations.

4 Conclusory allegations can not be sufficient when pleading actions for fraud. In *Goldrich*
 5 *v. Natural Y Surgical Specialties* (1994) 25 CA 4th 772, the Plaintiff alleged that a breast implant
 6 manufacturer fraudulently represented that their product was safe for use and would not require
 7 frequent removal from her body. The Court held that these conclusory terms "did not come
 8 close" to the required specificity in a fraud complaint; it cannot be determined what was said or
 9 by whom or in what manner (orally or in writing). *Goldrich* at 783. Here, Plaintiffs make no
 10 allegations demonstrating any more specificity than those found to be wholly insufficient by the
 11 court in the *Goldrich* matter.

12 CONCLUSION

13 While Plaintiffs are in the unique position to know upon what alleged misrepresentation
 14 they relied, they have failed to meet the specificity requirement for pleading causes of action for
 15 fraud by failing to allege how, when, where, to whom and by what means the representations
 16 were tendered. The general allegations of fraud against PETER BLAIR are wholly insufficient,
 17 and Plaintiffs complaint is devoid of any substantive fraud allegations against JIM SINGLETON,
 18 and THE YACHT CLUB, LLC. For the foregoing reasons, and those set forth in Defendants
 19 underlying motion, Defendants respectfully request that this Court dismiss the second through
 20 fifth causes of action for fraud.

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 22 DATED: March 18, 2008

McDONNELL & ASSOCIATES, P.C.

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25 Douglas M. Field, Attorney for Defendants
 26 PETER BLAIR, JIM SINGLETON, and
 27 THE YACHT CLUB, LLC
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REPLY TO OPPOSITION TO MOTION TO DISMISS

08Cev0021 JLS(BLM)

THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION